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Supreme Court of the United States

OCTOBER TERM 1959.

No. 946

JAMES T. YSZARA,

Petitioner,

versus

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Respondent.

BRIEF ON BEHALF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

F. CARTER JOHNSON, JR.,
503 American Bank Building,
New Orleans, Louisiana,
Attorney for Respondent.

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TO THE HONORABLE THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

MAY IT PLEASE THE COURT:

The petition for Writ of Certiorari filed herein does not come within those considerations governing review on Certiorari by this Honorable Court as expressed in Supreme Court Rule 19 (b), and there does not exist any special or important reasons therefor.

QUESTION PRESENTED.

There is no basis for petitioner's contention that the Court of Appeals, in reversing the Trial Court's judgment for the plaintiff, usurped the province of the jury by weighing the evidence on the issue of negligence and proximate cause, for the Court, in its opinion, 263 F. 2d, 937, page 939, held:

> "Agreeing that this is so, we accept for the purpose of the demonstration that the jury found that the matter occurred just as plaintiff said that it did, though the speaking facts of the collision seem strongly to support the testimony of Mrs. Baston, that her car was stopped in the driveway, and that the truck came off the blacktop and onto the shoulder and struck it."

OPINION.

The Court of Appeals thereupon found that, as a matter of law, upon plaintiff's own testimony, and upon the controlling cases therein referred to, plaintiff was guilty of such negligence as bar ed his recovery and held:

> "In plaintiff's statement, set out in substance hereinabove, it appears that, though he had 1000 feet of clear road with nothing in front of him or behind him, which interfered with his driving or prevented him from seeing what lay ahead, he, for a reason not stated instead of paying attention to the road and where he was going, looked off to the side and, when he turned his attention to the road, he suddenly noticed that fifteen or twenty feet in front of him the car was coming out in slow motion down to the

highway', and, undertaking to dodge it, he collided with it. Assuming as correct that his testimony that, at the time he dodged, Mrs. Baston's bumper and headlight had, coming out in slow motion, reached the highway and that this was negligence on her part, this would not avail him. *For, under settled law in Louisiana and elsewhere, a motorist is held to have seen an object which, by the use of ordinary care and prudence, he should have seen in time to avoid running into it and under ordinary circumstances,* such as prevailed here, the plaintiff, in driving at such a rate of speed that he could not stop and avoid a collision within the rante of his vision, was guilty of negligence." (Italics ours.)

CONCLUSION.

Accordingly, as there was no error by the Court of Appeals, or special or important reason assigned, the petition for Writ of Certiorari should be denied.

Respectfully submitted,

F. CARTER JOHNSON, JR.,
503 American Bank Building,
New Orleans 12, Louisiana,
Attorney for Respondent.

FORM FOR PROOF OF SERVICE.

I, F. Carter Johnson, Jr., attorney for State Farm Mutual Automobile Insurance Company, respondent herein, and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the ..... day of June, 1959, I served copies of the foregoing brief in opposition to the petition for a Writ of Certiorari, on the plaintiff herein, as follows:

By mailing a copy, in a duly addressed envelope, with first class postage prepaid, to Mary Ellen Caldwell, 3514 Marie Drive, Baton Rouge, Louisiana, and to Joseph A. Sims, Box 392, Hammond, Louisiana, Attorneys for Petitioner.

Signed: .....
Attorney for State Farm Mutual Automobile Insurance Co.,

Address: .....